IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 739 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHREE JANTA SAHAKARI MANDLI- LTD., - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR DIPAK R DAVE for Applicant(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 11/01/2007

ORAL JUDGMENT

Leave to amend the prayer clause.

2. The present Criminal Revision Application is

filed against an order passed by the learned Judicial Magistrate, First Class, Dholka, below application under section 169 of the Code of Criminal Procedure on 19.10.2006, whereby the learned JM(FC) was pleased to accept the report and was pleased to dismiss the complaint. The learned JM(FC), Dholka was also pleased to order that the accused be released forthwith.

3. Mr.Oza, learned advocate appearing with Mr.Dipak R. Dave for the applicant-complainant invited attention of the Court to order passed on 13.10.2006 in Special Criminal Application No.1645 of 2006 by this Court (Coram: S.R. Brahmbhatt, J.), the relevant part of which reads as under:

> "4. Looking to the progress made in the investigation and keeping the observation of this Court in case of NOORMOHMED JAMALBHAI LATIWALA Vs. STATE OF GUJARAT, reported in 2004 (2) G.L.H. 355, this Court is also of the view that, **let the investigation be conducted by senior most Police Inspector** of Dholka police station. This change in investigating officer is made only in view of the decision of this Court in case of Noormohmed Jamalbhai Latiwala (supra). It

> would not amount to reflecting upon the conduct of the present investigating officer. The intricacy of the investigation is such that deserves to be investigated by Senior Officer of Dholka police station. This order, therefore, may not be construed as reflecting upon the conduct of the present investigating officer. As it is stated by Shri. Lakhani and Shri. Patel no elaborate reasoning is required for allowing this petition and changing investigating officer. (emphasis supplied)

4. Learned advocate Mr.Oza invited attention of the Court to the fact that this order dated 13th October 2006 was served to the senior-most Inspector of Dholka Police Station on 16.10.2006, in the afternoon, to be precise at about 03.00 PM. Said senior-most Inspector filed report, as is recorded in the order under challenge on 18.10.2006, i.e. within less than 48 hours. The matter was heard on 18.10.2006 and thereafter, it was kept on 19.10.2006 and the order under challenge was passed at 07.45 PM. He submitted that the investigation which was assigned to the senior-most Police Inspector by this Court by reposing confidence in the officer is not responded well. The officer submitted his report in

a matter which was felt to be a complicated one, to be handled by the senior-most Inspector. The matter was handled in such a manner, which was not anticipated by the Court, at the time of passing of the order.

5. After the matter was discussed at length, Mr.H.L. Jani, learned Additional Public Prosecutor suggested that if the Hon'ble Court is of the opinion that the officer in whom the confidence was reposed has not responded well, the Court may order to hand over the investigation to an officer of the rank of Deputy Superintendent of Police.

6. At the request of the learned APP, this Court restrains itself from commenting upon the conduct of the senior-most Police Inspector, Dholka Police Station.

On a consensus being arrived at during the hearing of the matter, with a view to see that the ends of justice are best served and to dislodge the feeling that the matter was hushed up even by the senior-most

Police Inspector, more particularly, when the matter involves an investigation which is required to be conducted by a well trained, competent investigating officer, keeping in mind the observations made in paragraphs 23 and 24 of the decision of this Court in the matter of Noormohmed Latiwala Vs. State of Gujarat, reported in 2004 (2) G.L.H. 355 (supra) investigation is now ordered to be conducted by the Deputy Superintendent of Police, Dholka, namely, Shri T.N. Thakore, who is present in the Court. It is clarified that in the event of non availability of the said officer, investigation shall be carried out by his successor in office.

7. In view of the discussion and aforesaid direction, order dated 19th October 2006 passed by the learned JM (FC), Dholka below application under section 169 of the Cr.PC which says that 'the report under section 169 of the Code of Criminal Procedure is accepted and the complaint is dismissed' is quashed and set aside. Consequential order dated 20.11.2006 granting 'B' Summary No.76 of 2006 is also quashed. The order to release the accused

forthwith remains operative.

However, it is clarified that in the event the Investigating Officer deems it necessary to ask for remand, it will be open for him to approach the Court to obtain necessary orders in that regard, in accordance with law. It is clarified that after investigation is over, the Police will act in accordance with law in the matter. Rule is made absolute to the aforesaid extent.

(RAVI R. TRIPATHI, J.)

karim